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PTO/SB/21 (09-04)

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17

Application Number 10/605,557

Filing Date OCTOBER 8, 2003

First Named Inventor RON M. BEAN

Art Unit 3712

Examiner Name B. MILLER

Attorney Docket Number 03B1682

ENCLOSURES (Check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input checked="" type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
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Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	SIMMONS, PERRINE ALBRIGHT & ELLWOOD, P.L.C.		
Signature			
Printed name	GREGORY G. WILLIAMS		
Date	JULY 13, 2005	Reg. No.	31,681

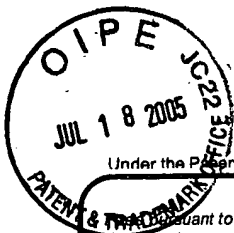
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This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PTO/SB/17 (12-04v2)

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FEE TRANSMITTAL

For FY 2005

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 250.00

Complete if Known

Application Number	10/605,557
Filing Date	OCTOBER 8, 2003
First Named Inventor	RON M. BEAN
Examiner Name	B. MILLER
Art Unit	3712
Attorney Docket No.	03B1682

METHOD OF PAYMENT (check all that apply)☒ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify):☒ Deposit Account Deposit Account Number: 19-2260 Deposit Account Name: SIMMONS PERRINE ET AL.

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☐ Charge fee(s) indicated below☐ Charge fee(s) indicated below, except for the filing fee☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17☒ Credit any overpayments**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
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- 20 or HP = x =

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
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- 3 or HP = x =

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
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- 100 = / 50 = (round up to a whole number) x =

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): APPEAL BRIEF FILING

Fees Paid (\$)

\$250.00

SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 31,681	Telephone 319-887-1368
Name (Print/Type)	GREGORY G. WILLIAMS		Date JULY 13, 2005

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Ron M. Bean

Application No: 10/605,557

For: ADJUSTABLE TURKEY PAN
CALL HOLDER

Group Art Unit: 3712

Filed: October 8, 2003

Attorney Docket: 03B1682

Examiner: B. Miller

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APPLICANT'S BRIEF ON APPEAL TO THE BOARD

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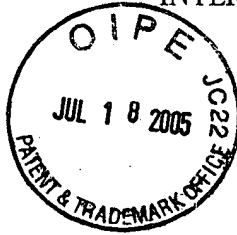
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

In re Application of:

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APPLICANT'S BRIEF ON APPEAL TO THE BOARD

This is an appeal from the final rejection of the Examiner dated February 24, 2005, rejecting claims 7 and 21 in the case. This Brief is accompanied by the requisite fee set forth in §1.17(c).

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

REAL PARTY IN INTEREST

The real party in interest in this appeal is the assignee, Hunter's Specialties, Inc.

RELATED APPEALS AND INTERFERENCES

The application on appeal is not subject to, or an element in, any other appeal or interference proceeding within the U.S. Patent and Trademark Office.

STATUS OF CLAIMS

Claims 1-21 are pending; all claims have been allowed except that claims 7 and 21 have been finally rejected, and both claims 7 and 21 are on appeal.

STATUS OF AMENDMENTS

No amendments to the claims or the specification have been filed subsequent to the final rejection dated February 24, 2005.

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SUMMARY OF THE CLAIMED SUBJECT MATTER

Without limiting the claims on appeal, the invention of Claim 7 is summarized below:

A method of retaining a game call comprising the steps of:

providing a game call (see Fig. 1 #102 and lines 4-8 on page 6 of the specification) having a top playing surface (not shown, lines 4-8 on page 6 of the specification), and a rim (see Fig. 1 #102 and lines 4-8 on page 6 of the specification) around a periphery of said game call;

inserting said game call between a plurality of rim gripping members (see Figs. 1-3 #120 and lines 12-20 on page 6 of the specification);

manipulating said plurality of rim gripping members, in response to a force from a source other than contact with said game call, (in other words, manipulating the rim gripping members in some way other than pressing the game call itself against the gripping members; see lines 17-20 Page 7 and line 1-2 Page 8), so as to cause each of said plurality of rim gripping members to exert a force directed *inwardly* of said rim and toward a common central point, so as to grasp said game call at said rim and to retain said game call between said plurality of rim gripping members.

The invention of claim 21 is summarized as follows:

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An apparatus for holding a game call (see Fig. 1 #102 and lines 4-8 on page 6 of the specification) having a top playing surface (not shown) and a peripheral top rim (see Fig. 1 #104 and lines 4-8 on page 6 of the specification), the apparatus for holding comprising:

a plurality of non-elastic structures (see Figs. 1-3 #120 and lines 12-20 on page 6 of the specification), configured to grasp therebetween the peripheral top rim;

an adjusting **mechanism** for varying a **separation distance** between **ends** of said plurality of non-elastic structures (see Fig. 3. # 302, 304, 306, 308 and 310, and 312 on lines 10-16 page 7 of the specification); and,

a strap coupled to said adjusting mechanism, said strap sized and configured to extend around a human thigh.

GROUND OF REJECTIONS TO BE REVIEWED ON APPEAL

Whether claim 7 has been properly rejected under 35 U.S.C. §102 (e) as being anticipated by the Waltz reference.

Whether claim 21 has been properly rejected under 35 U.S.C. §103 as being unpatentable over Musacchia in view of Waltz.

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ARGUMENT

The Appellant contends the following with respect to each ground of rejection listed above.

WHETHER CLAIM 7 IS PROPERLY REJECTED AS
BEING ANTICIPATED BY THE WALTZ REFERENCE

Independent claim 7, as presented on appeal, is easily distinguishable from the Waltz reference. Claim 7 includes, among others, the following limitations:

“manipulating said plurality of rim gripping members, in
response to a force from a source other than contact with
said game call, so as to cause each of said plurality of rim
gripping members to exert a force directed inwardly of
said rim and toward a common central point, so as to grasp
said game call at said rim and to retain said game call
between said plurality of rim gripping members.”
(emphasis added).

The Appellant believes that the cited Waltz reference fails to teach the above characterized limitation.

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First of all, the Examiner fails to even allege that the Waltz reference has a source of a force which could manipulate the gripping members other than the call itself. The Examiner states in the advisory action the following:

“Continuation of 11. does NOT place the application in condition for allowance because: In response to Applicant’s remarks that Waltz fails to teach the ‘manipulating said plurality of rim gripping members, in response to a force from a source other than contact with said game’ recited in claim 7, the Examiner disagrees. It should be noted in col. 4, lines 6-11 and 23-26, the baising member 65, which is secured to the rails, flexes to allow insertion of the planar call device 80. Therefore, the Examiner contends that the flexibility of baising member 65 allows a person, i.e., the hunter (e.g., by using his or her hands), to insert or remove the game call from the device.” (emphasis added).

The Examiner appears to equate the act of inserting or removing the game call from the device with the claimed limitation of “manipulating said plurality of rim gripping members, in response to a force from a source other than contact with said game call.”

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BEFORE THE BOARD OF PATENT APPEALS AND
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It is not apparent to the Appellant, nor has the Examiner argued, how the member 65 flexes other than via *contact with said game call*. Indeed, the Examiner does not allege or suggest that some other mechanism manipulates member 65 “*so as to cause each of said plurality of rim gripping members to exert a force directed inwardly of said rim and toward a common central point, so as to grasp said game call at said rim and to retain said game call between said plurality of rim gripping members.*”

It is clear that the Examiner’s strained interpretation of the Waltz reference and the equating the same to the plurality of gripping members of the present invention as claimed in claim 7 and as shown in one embodiment in Figure 3 is improper. The Examiner must consider each and every limitation of the claim. To fail to consider these limitations is a failure to examine the claim as a whole, as is required.

The Appellant believes that the Waltz reference does not anticipate Claim 7 when each and every limitation of the claim is thoroughly considered.

WHETHER CLAIM 21 IS PROPERLY REJECTED AS BEING
OBVIOUS OVER THE MUSACCHIA AND WALTZ REFERENCES

Claim 21 includes the following key limitations which are not taught by the cited references.

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“a plurality of non-elastic structures configured to grasp
therebetween the peripheral top rim;

“*an adjusting mechanism for varying a separation
distance between ends of said plurality of non-elastic
structures;*”

The Examiner argues as follows in the final rejection:

“Claim 21 are rejected under 35 U.S.C. 103(a) as being
unpatentable over Musacchia in view of Waltz.

“Musacchia teaches in the figures most of the elements of
the claimed invention, including a plurality of structures
(14, 16), an adjusting mechanism (col. 4, lines 64-67).”

Column 4 lines 64-67 of Musacchia are reproduced below:

60 atop the game call 30. Although any of several types of
elongated members may be used to span and retain the call
in place, an endless or continuous elastic member as shown
in the drawings has been found to be extremely reliable,
offering both adjustability in that it accommodates various
65 sizes and types of calls and also provides a quick and simple
manner for securing and releasing game calls from the
holder 10. FIG. 2 most clearly illustrates the construction of

The Examiner then goes on to state as follows:

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“However, Musacchia fail to teach non-elastic structures.

Waltz teaches in the figures a holder device 10 that is fabricated from metal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use non-elastic structures as taught by Waltz for the structures of Musacchia for the purpose of providing a more secured holding for the game call.”

The Examiner unbelievably appears to be claiming that the retainer element 44 is BOTH the claimed element of a plurality of non-elastic rim gripping members and the mechanism for varying separation of the ends of the rim gripping members. The Examiner contends that the “**endless or continuous elastic member**” (i.e. rubber bands) of Musacchia teaches a MECHANISM for varying a SEPARATION DISTANCE between the non-existent ENDS of themselves. This is most difficult to comprehend. There is no argument provided of a teaching in Musacchia of a MECHANISM, nor does the Examiner argue that the cited structure be used to vary any **separation distance** between the ENDS of anything that could be a gripping member; i.e., the Examiner does not cite anything in Waltz that teaches a mechanism for varying a separation distance between ends of gripping members. The Examiner merely states that it would be obvious to use non-elastic structures of Waltz to replace the elastic structures of Musacchia; but the Examiner appears to have already claimed that the elastic nature of the continuous member is itself the **separation distance**

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varying mechanism! One prong of the Examiner's two-prong argument is incompatible with the other. (Note: as stated earlier, it is also insufficient, even if you ignore the inconsistencies, to teach every claim limitation.)

The Appellant believes that the Examiner has not carefully considered each and every limitation of the claim. As such, the Examiner is failing to consider the claim as a whole, as is required by 35 U.S.C. §103.

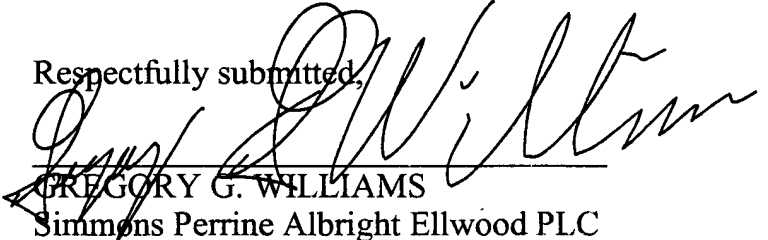
These cited references clearly do NOT establish a *prima facie* case of obviousness with respect to claim 21.

CONCLUSION

The Appellant respectfully submits that the Examiner has failed to consider each and every one of the claim limitations and, therefore, requests that the rejection of claims 7 and 21 be reversed and that the application be allowed.

July 13, 2005
Date

Respectfully submitted,


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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

CLAIMS APPENDIX

Claim 7 (currently amended) A method of retaining a game call
comprising the steps of:

providing a game call having a top playing surface, and a rim around a
periphery of said game call;

inserting said game call between a plurality of rim gripping members;

manipulating said plurality of rim gripping members, in response to a force
from a source other than contact with said game call, so as to cause each of said
plurality of rim gripping members to exert a force directed inwardly of said rim and
toward a common central point, so as to grasp said game call at said rim and to retain
said game call between said plurality of rim gripping members.

Claim 21 (previously amended) . An apparatus for holding a game call having
a top playing surface and a peripheral top rim, the apparatus for holding comprising:

a plurality of non-elastic structures configured to grasp therebetween the
peripheral top rim;

an adjusting mechanism for varying a separation distance between ends of said
plurality of non-elastic structures; and,

a strap coupled to said adjusting mechanism, said strap sized and configured to
extend around a human thigh.

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BEFORE THE BOARD OF PATENT APPEALS AND
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EVIDENCE APPENDIX

None

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RELATED PROCEEDINGS APPENDIX

There are no related proceedings associated with this appeal.